



Legal Update

October 2015

The SJC holds that police cannot stop a motor vehicle for the smell of marijuana alone.

Commonwealth v. Elivette Rodriguez SJC No-11799, (2015):

Background: Detective Daniel Amaral, a seasoned narcotics officer, of the New Bedford Police Department was conducting surveillance with the narcotics team when he observed a motor vehicle that he had stopped before. Detective Amaral had previously arrested driver of the motor vehicle for heroin possession. As Detective Amaral followed the vehicle, he detected an odor of burnt marijuana coming from it. The windows in Detective Amaral's cruiser and the vehicle were open. Detective Amaral knew that the surveillance team was interested in the vehicle because of its connection to the earlier drug-related arrest and thereafter received instruction from the surveillance team to pull it over. At no time did Detective Amaral observe the vehicle commit any traffic violations. Detective Amaral smelled only an odor of marijuana at the time of the motor vehicle stop.

The driver of the vehicle was a male and he had in his right hand what appeared to be a marijuana cigar. Detective Amaral asked whether the odor he smelled was coming from the cigar and the driver admitted it was. During the traffic stop, the driver provided Detective Amaral with a license and registration. As the stop continued, police discovered a plastic bag inside the car containing sixty (60) Percocet pills. The defendant who was the passenger in the vehicle was charged with possession with intent to distribute a class B substance within a school zone and

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conspiracy to violate the drug laws all in connection within the pills that were seized from the motor vehicle.

The defendant filed a motion to suppress based on the grounds that the car stop was unlawful. It was not clear from the record of the motion to suppress how the pills were initially discovered during the stop. The Commonwealth argued that the stop was lawful because it was similar to routine stop for civil traffic violations. The SJC retained the case after an appeal was filed in the Appeals Court. The question before the SJC was “whether the Fourth Amendment and art. 14 permit police to stop a vehicle where they have reasonable suspicion, but not probable cause, to believe that a civil infraction for marijuana possession is occurring or has occurred.”

Conclusion: The SJC concluded that the stop was unlawful and found that there was “no governmental interest,” that justified the police stopping a vehicle based on reasonable suspicion that someone in the vehicle possesses an ounce or less of marijuana in violation of G.L. c. 94C, § 32L.

1st Issue: Was there reasonable suspicion to stop the motor vehicle?

The SJC found that the smell of burnt marijuana supports reasonable suspicion that that an individual is committing the civil offense of possession of a small quantity of marijuana, but not probable cause to believe that he or she is committing the offense and therefore it is insufficient to stop of motor vehicle on that factor alone. As part of its analysis, the SJC reviewed the number of cases that addressed whether police have probable cause to issue an exit order based on the odor of burnt marijuana alone. The first case the SJC considered was *Cruz* which established that the odor of burnt marijuana alone did not create probable cause or even reasonable suspicion of criminal activity sufficient to justify ordering the vehicle’s occupants out of the vehicle. *Commonwealth v. Cruz*, 459 Mass 459 (2011).

Second the SJC examined *Overmeyer* where it had found that the odor unburnt marijuana alone does not support a finding of probable cause to search a vehicle without a warrant. *Commonwealth v. Overmeyer*, 469 Mass. 16 (2014). Here, the SJC had to determine whether the odor of burnt marijuana alone coming from a moving motor vehicle provided police with reasonable suspicion to stop the motor vehicle and issue a civil citation for marijuana.

At the time of the stop, the police had only the odor of burnt marijuana coupled with indicia of drug transaction that may have previously occurred. These factors failed to provide police with reasonable suspicion. The SJC further stated that the odor of burnt marijuana coming from a vehicle does not establish probable cause of even a civil violation because the smell could be coming from the clothes of the passengers or some other reason that fails to establish probable

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cause that there was marijuana in the vehicle. The SJC concluded that the police only had reasonable suspicion that a civil violation was taking place. The fact that the drug investigation unit was conducting surveillance of the vehicle did not establish reasonable suspicion of a criminal violation, which would have permitted the stop.

Despite the lack of reasonable suspicion, the Commonwealth argued that stopping a motor vehicle to issue a citation for marijuana is comparable to stopping a motor vehicle that has committing a traffic violation. The SJC did not agree and held that while stopping motor vehicle to investigate civil marijuana infractions serve a general law enforcement purpose, there is no obvious and direct link between enforcement of the civil penalty for marijuana possession and maintaining highway safety. Moreover, the SJC held that permitting police to stop a motor vehicle to issue a civil citation based upon the smell of burnt marijuana and nothing more, runs contrary to the purpose of G.L. c. 94C, § 32L.

“Although many traffic violation statutes regulate moving cars and relate directly to the promotion of public safety; even those laws that have to do with maintaining a vehicle’s equipment in accordance with certain standards may also be safety-related.” Permitting stops based on reasonable suspicion or probable cause that these laws may have been violated gives police the ability to immediately address potential safety hazards on the road. Although a motor vehicle stop does represent a significant intrusion into an individual’s privacy, the governmental interest in allowing such stops for the purpose of promoting compliance with our automobile laws is clear and compelling.

In particular, “there are three policy goals that c. 94C, §32L, intended to serve: (a) to reduce the direct and collateral consequences of possessing small amounts of marijuana, (b) to direct law enforcement’s attention to serious crime, and (c) to save taxpayer resources previously devoted to targeting the simple possession of marijuana.” The SJC reasoned that allowing police to stop a vehicle based on reasonable suspicion that an occupant possesses marijuana does not serve these objectives. “Rather, it encourages police to continue to investigate and to pursue individuals suspected of this offense in the same manner as before decriminalization, it does not refocus police efforts on pursuing more serious crime, and it subjects individuals who police merely suspect may be committing a non-dangerous, civil offense to all of the potential consequences of a vehicle stop.”

The SJC further stated in its holding that not all types of reasonable suspicion warrant the stop of a motor vehicle. The civil marijuana violation established in M.G.L. c. 94C, sections 32L-32N, does not specifically target motor vehicles, but was intended to direct law enforcement attention away from marijuana and to “more serious crime.” Based on this distinction, the SJC

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ruled that motor vehicle stops based on reasonable suspicion of a civil marijuana violation are unreasonable and therefore violate Article 14 of the Massachusetts Declaration of Rights.

“Although marijuana possession remains illegal, the present case is not an example of where a police officer actually observed an infraction — such as a person walking through a park smoking what appeared to be a marijuana cigar or cigarette — and stopped the offender for the purpose of issuing a citation and confiscating the offending item.” Rather, in *Rodriguez*, the police smelled burnt marijuana alone and stopped the motor vehicle to investigate whether a citation was appropriate. *After* the police stopped the motor vehicle, that Detective Amaral observed the driver’s marijuana cigar. Because stops based on reasonable suspicion of a possible civil marijuana infraction do not promote highway safety and run contrary to the purposes of G.L.c. 94C, §32L, the SJC held that extending the rule that allows vehicle stops based on reasonable suspicion of a civil motor vehicle offense to stops to enforce the civil penalty for possession of one ounce or less of marijuana do not promote highway safety and run contrary to the purposes of Such stops are unreasonable; therefore, the stop in this case violated art. 14.”

Commentary: *Rodriguez* does not preclude police from stopping a motor vehicle if they suspect OUI drugs. However, in this case no field sobriety tests were given since there was no indication that the driver of the motor vehicle was impaired.

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